

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its won  
motion as to the propriety of the rates and  
charges set forth in the tariff filings by  
Verizon – New England, Inc.,  
d/b/a Verizon - Massachusetts

DTE 98-57, Phase III

**INITIAL BRIEF OF AT&T**

On September 29, 2000, in recognition of the fact that many Massachusetts consumers may be shut out of the DSL market due to the ongoing expansion of Integrated Digital Loop Carrier (“IDLC”) in Verizon’s network, the Department ordered Verizon “to file a tariff that would enable CLECs to place or have Verizon place CLEC-purchased line cards in Verizon’s DLC electronics at the RT.” *See* Phase III Order, D.T.E. 98-57 Phase III, September 29, 2000, (“Phase III Order”) at 86, 87. After Departmental rulings on various motions for reconsideration, Verizon finally filed an “Illustrative Tariff for Packet at the Remote Terminal Service (PARTS) with Option for CLEC Provided Line Cards” on March 12, 2001.<sup>1</sup> Along with this “Illustrative Tariff,” Verizon filed comments in which it claimed that it has no duty to provide PARTS or a Plug and Play option, that any PARTS service that it someday may choose to offer would be a service with pricing not based on TELRIC principles, and that Plug and Play was an infeasible and unnecessary option. Covad filed rebuttal testimony on September 10, 2001, Verizon filed surrebuttal on September 19, 2001, and hearings were held on November 15, 2001.

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<sup>1</sup> The “Option for CLEC Provided Line Cards” is essentially a version of Plug and Play.

The record established in this manner demonstrates that Verizon's arguments are invalid and that the Department should develop a procedure whereby CLECs will be able to obtain Plug and Play at TELRIC rates as soon as Verizon or its affiliate deploys the technology that would allow Plug and Play or deploys the infrastructure to support wholesale packet transport services. AT&T fully endorses Covad's proposal and position in this case and supplies this brief to help clarify a few disputed issues.

**Argument.**

**I. IN ORDER TO ENSURE COMPETITION IN THE ADVANCED SERVICES MARKET, THE DEPARTMENT SHOULD ORDER VERIZON TO FILE AN EFFECTIVE TARIFF FOR BOTH ITS PARTS PROPOSAL AND FOR PLUG AND PLAY.**

**A. Currently, CLECs are unable to provide DSL services to a growing number of Massachusetts customers.**

The record in this case demonstrates that for a growing segment of the Massachusetts DSL market Verizon faces little or no competition. As Verizon updates its network, it continues to replace traditional copper facilities with fiber fed ones (IDLC). Because it is infeasible for CLECs to offer DSL service to end users served by IDLC, Verizon's expanding installation of IDLC is allowing Verizon to gain a stranglehold over DSL competition.

Without PARTS or Plug and Play, the only option available to a CLEC that wishes to provide DSL services to such customers is to place a DSLAM at the Remote Terminal ("RT") serving that customer and connect to the customer's premise through use of Verizon's unbundled copper House and Riser and unbundled copper distribution sub-loop tariff offerings. *See* Ex. CVD-1, Covad Direct at 25-26. This, however, is not a viable alternative for CLECs. First, as Verizon admits, there is simply no space available for CLECs to collocate a DSLAM in or near many of Verizon's RTs. *See* Tr. at 941-942.

Second, even if there were space for a CLEC to collocate a DSLAM at or near the RT, the costs of collocating the DSLAM would vastly exceed the benefit. *See* Ex. CVD-1, Covad Direct at 26.

CLECs wishing to provide DSL services to end users that are served over copper facilities can do so by collocating a DSLAM at the central office (“CO”) the serves that end user. Although it is very expensive to collocate a DSLAM, in some cases it is economically reasonable for a CLEC to do so at a CO because that will give the CLEC potential access to all copper-fed end users that are served by the CO. It does not, however, make financial sense in many cases for a CLEC to collocate a DSLAM at an RT—the action that a CLEC must take to offer DSL to end users served by IDLC in the absence of an effective, in-place PARTS or Plug and Play offering. CLECs generally cannot afford to collocate DSLAMS at RTs because the cost is extremely high (the same as collocating a DSLAM at a CO) and the potential return is low due to the vastly smaller pool of potential customers served by each RT, compared to the number served by each CO. Indeed, a single CO serves an average of 21 RTs, meaning that each RT serves only 1/21 as many end users as each CO. *See* Ex. CVD-1, Covad Direct at 26.

Because RTs serve so many fewer end users than COs, CLECs are not financially able to install DSLAMs at very many RTs because they could not serve enough end users to recover costs. As a result, without an effective PARTS or Plug and Play offering, the majority of end users served by IDLC will have one choice and one choice only for advanced services—Verizon. This gives Verizon an enormous competitive advantage that will allow it to crush its competition and stifle innovation merely by continuing to expand the number of end users served by IDLC. Covad’s Plug and Play proposal would

remedy this problem by allowing CLECs to realistically compete with Verizon for the end users served by IDLC.

**B. Verizon's network infrastructure can support DSL over IDLC.**

It would be particularly inappropriate to allow Verizon to have such a competitive advantage in light of the fact that, despite Verizon's invalid arguments to the contrary, Verizon's network infrastructure *can* support both PARTS and Plug and Play. Verizon has already begun to deploy Litespan 2000, a next generation digital loop carrier ("NGDLC") developed by Alcatel. *See* Ex. CVD-1, Covad Direct at 16; Ex. VZ-MA 11, VZ Rebuttal at 15-16. Litespan 2000 is designed to support DSL over IDLC and Verizon has admitted that it is "pre-configuring" all new NGDLC RTs so that the RTs will be compatible with a future potential PARTS offering. *See id.* Verizon has also admitted that, on a going forward basis, it will only be installing new RTs that use NGDLC and support DSL over DLC. *See* Tr. at pp. 912-913. Thus, it is undisputed that Verizon has the technical ability to provide PARTS already at some RTs and that this ability will be expanding to more RTs as Verizon continues to install Litespan 2000 or similar products in its RTs.

Furthermore, because the only physical difference between Verizon's PARTS offering and a Plug and Play offering is the ownership of the line cards (Tr. at pp. 841-842; Ex. CVD-1, Covad Direct at 15), all of Verizon's new NGDLC RTs will also be able to support Plug and Play. Additionally, Covad is merely requesting that Verizon be required to provide PARTS and Plug and Play in these new NGDLC RTs. Thus, Verizon's argument that it does not have the network infrastructure to support PARTS and Plug and Play is a mere smokescreen and should be ignored.

**C. Verizon's claim that the four conditions of 47 CFR 51.319(c)(5) have not been met is irrelevant and should be rejected.**

Verizon claims that it cannot be compelled to offer PARTS or Plug and Play because the four conditions set forth in 47 CFR 51.319(c)(5) have not been met. That section states as follows:

- (5) An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied. The requirements in this section relating to packet switching are not effective until May 17, 2000.
  - (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
  - (ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;
  - (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and
  - (iv) The incumbent LEC has deployed packet switching capability for its own use.

47 CFR 51.319(c)(5).

Verizon's argument is, however, irrelevant to the request being made by the CLECs in this case.

There has never been any serious dispute that in the instances where a CLEC would be requesting either PARTS or Plug and Play, the first two of these conditions would be met. *See* Ex. VZ-MA 10, VZ Direct at 13; Ex. VZ-MA 11, VZ Rebuttal at 2-5. Verizon claims, however, that the third and fourth conditions have not been met. Verizon's argument regarding the fourth condition, however, is just a smokescreen that

should be ignored. As was pointed out above, Covad is not requesting that the Department require Verizon to provide PARTS or Plug and Play today, only that the Department require Verizon to provide those options so that Verizon's competitors can offer DSL services at the very same moment that Verizon or its affiliate begins to offer similar services to its own customers. For CLECs to be able to offer DSL services at the same time as Verizon, all the tariff provisions and associated operational requirements would need to be settled *before* Verizon or its affiliate introduces a DSL service over fiber fed loops. *See* discussion *supra* at § IB and *infra* at § II. Therefore, Verizon's argument regarding the fourth condition is moot. Thus, the only question is whether the third condition has been met.

Verizon seems to be arguing that because it has tariffed a House and Riser and unbundled copper distribution sub-loop offering, that the third condition has not been met. *See* Tr. at p. 938; Ex. VZ-MA 11, VZ Rebuttal at 4. However, whether or not Verizon has *tariffed* these offerings is irrelevant. What is relevant is the fact that, by Verizon's own admission, these offerings are not available at every RT. *See* Tr. at pp. 939-942. At those RTs where these offerings are not available, Verizon cannot claim have "permitted a requesting carrier to deploy a [DSLAM]." 47 CFR 51.319(c)(5). Thus, at those RTs where these offerings are not available, all four conditions will be met and Verizon will be required by law to provide "nondiscriminatory access to unbundled packet switching capability." 47 CFR 51.319(c)(5).

**D. Plug-and-Play is the best system for encouraging innovation and competition.**

The primary physical between Verizon's proposed PARTS offering and Covad's Plug and Play proposal is the ownership of the line card. Simply put, under the PARTS

offering, Verizon would own the line cards, whereas under Covad's proposal the CLEC would own the line card. *See* Tr. at pp. 841-842. The more important difference between the two proposals, however, is the benefits that Plug and Play will bring to Massachusetts consumers.

Plug and Play will allow CLECs to differentiate their services and products from those of Verizon. *See* Ex. CVD-1, Covad Direct at 13. This allows CLECs to offer consumers different types of DSL, with higher service qualities than the types of DSL offered by Verizon. *See id.* at 13-14. Indeed, this is one of the main benefits of competition—that it encourages innovation which then gives more options to consumers.

As Covad put it in its Direct Testimony:

“By requiring Verizon to open its network architecture to competition, there will be demand on manufacturers like Alcatel to make line cards that perform functions other than the limited service parameters offered by Verizon. Indeed, Alcatel has a corporate policy of working with other manufacturers to design and produce line cards for Alcatel remote terminals, but will only do so if there is demand for such products. Covad and other CLECs would welcome the opportunity to create that demand, but Verizon seeks to prevent such competitive activity.”

*Id.* at 28.

Conversely, if Plug and Play is not offered, Verizon will be the sole arbiter of what types of line cards and what level of service will be provided in Massachusetts. Under such a scenario, Verizon would have no incentive to innovate and Massachusetts consumers would suffer. As Covad witness Clancy has pointed out, such a situation would harken back to the days when the phone company faced no competition and refused to offer any innovations to its consumers. *See* Tr. page 841 lines 13-15 (“Here's

the service. Take it or leave it. It's called, telephones are black. Why are they black? Because we want them to be black.”).

Verizon attempts to ignore the benefits that Plug and Play will provide to Massachusetts consumers and instead wrongly claims that the Plug and Play option would lead to new ordering steps, additional dispatches and inventory management problems. *See* Ex. VZ-MA 10, VZ Direct at 19-21. In reality, however, there is no need for additional ordering steps because the same information has to be provided regardless of who owns the line card. *See* Ex. CVD-1, Covad Direct at 31. Furthermore, the record demonstrates that CLEC ownership of the line card should not entail any additional dispatches because, regardless of who owns the line card, it still needs to be placed in the proper slot. *See id.* at 31. Finally, Verizon offers no persuasive reason why inventory management would be a problem under a Plug and Play system. Verizon’s OSS already tracks the use of pairs and splitters by CLECs and there is no reason why it could not track line cards in a similar fashion. *See id.*

The record evidence demonstrates that Plug and Play will provide substantial benefits to Massachusetts consumers. It also makes it clear that this benefit can be achieved without inefficiencies or substantial logistical hurdles. Therefore, it is important for the Department to adopt a Plug and Play option under which CLECs own the line cards instead of only adopting the PARTS proposal under which Verizon owns the line cards.

## **II. THE PARTS AND PLUG AND PLAY OFFERINGS SHOULD BE TARIFFED AS UNES, NOT AS SERVICES.**

Once the Department determines that Verizon should be required to Tariff a PARTS option and a Plug and Play option, the Department must determine whether these



offerings should be tariffed as a UNE or as a service. This is an essential component of the Department's decision making process, because if Verizon continues to treat these options as services and not UNEs, TELRIC pricing principles will not apply and Verizon will have the ability to deter competition at any time it desires merely by raising the prices it charges to its competitors.

The answer to the question of whether these offerings should be priced at TELRIC rates is actually quite simple. Verizon has made it clear that it will not offer PARTS or Plug and Play until all four of the conditions set forth in 47 CFR 51.319(c)(5) are met. Once those four conditions are met, however, by the very terms of 47 CFR 51.319, Verizon must offer access to these options as a UNE. Therefore, TELRIC pricing must apply to Verizon's tariff.

### **III. IT IS ESSENTIAL FOR THE DEPARTMENT TO DEAL WITH THESE ISSUES NOW.**

It is essential for the Department to move quickly to establish a procedure to identify which RTs CLECs will have Plug and Play and PARTS access at and on what terms they will have such access. Despite Verizon's protestations, the Department must not wait until Verizon or its affiliate begin to provision DSL via NGDLC before it investigates these offerings and renders a decision. If the Department waits until that time, the CLECs will be crippled in their ability to pursue customers because Verizon will have a golden opportunity to sign up as many customers as possible without any competition while the time consuming tariff process runs its course, undoubtedly lengthened by Verizon delay tactics.

Indeed, the Department has already considered and rejected Verizon's request to delay investigation of the PARTS and Plug and Play offerings for this very reason. *See*

Phase III Order, D.T.E. 98-57 Phase III, September 29, 2000, (“Phase III Order”) at 88-89; Order on Motions for Reconsideration, Clarification, Extension of Time, and Extension of Judicial Appeal Period, and Request for Reexamination of Compliance Filing, D.T.E. 98-57 Phase III, January 8, 2001, (“Jan. 8 Order”) at 44. As the Department noted in the Phase III Order:

Since by their very nature, tariff proceedings are time consuming, we find that it would be fundamentally unfair to CLECs, and to consumers, to allow Verizon’s data affiliate, which Verizon has indicated will be operational by January 2001, to deploy the technology that would allow plug and play, or to deploy the “infrastructure to support wholesale packet transport services from [Verizon’s] RTs and only then file with the Department a proposed tariff offering for CLECs to do the same. Covad argues persuasively that it is not enough to permit CLECs to have access to plug and play only after Verizon or its affiliate deploys actual retail services because it would take CLECs several months to be in a position to offer their own services using this technology.” *See* Phase III Order at 88-89.<sup>2</sup>

It is essential to establish procedures and terms immediately instead of waiting until Verizon is ready to begin offering such services to its own customers. If the Department were to wait to develop procedures until Verizon begins to offer DSL over NGDLC to its own customers, Verizon would have a substantial competitive advantage in the form of a significant head start in the race to sign up DSL customers. The Department must act now in order to avoid this situation that would be “detrimental to competition and to Massachusetts consumers.” *See* Jan. 8 Order at 44.

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<sup>2</sup> The Department pointed to the example of the xDSL and line sharing tariff where, even on an accelerated schedule, “approximately four and a half months elapsed from the time Verizon filed its proposed xDSL and line sharing tariff to the date we issued the Order. No party would disagree that tariff proceedings are time consuming.” Jan. 8 Order at 44 (internal citations

### **Conclusion.**

For the reasons set forth above and in Covad's brief, AT&T respectfully requests that the Department adopt Covad's Plug and Play proposal. Additionally, AT&T requests that the Department establish a procedure that will allow all parties to quickly determine the remote terminals at which Verizon will be required to offer both PARTS and Plug and Play once Verizon or its affiliate begins deploying technology that would allow Plug and Play or deploys the infrastructure to support wholesale packet transport services.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that I caused a true copy of the above document to be served up on the attorney of record for each other party by mail on December 18, 2001.

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